

HOUSE BILL REPORT

SHB 1761

As Passed House:
March 2, 2011

Title: An act relating to limiting private activity bond issues by out-of- state issuers.

Brief Description: Limiting private activity bond issues by out-of-state issuers.

Sponsors: House Committee on Capital Budget (originally sponsored by Representatives Dunshee and Ormsby; by request of Washington State Housing Finance Commission).

Brief History:

Committee Activity:

Capital Budget: 2/8/11, 2/18/11 [DPS].

Floor Activity:

Passed House: 3/2/11, 96-0.

Brief Summary of Substitute Bill

- Requires an out-of-state issuer of private activity bonds proposing to issue bonds for a project in Washington to submit specified information to the relevant Washington statewide bond issuing authority.
- Requires the authority to determine whether or not the project may proceed to public hearing, based on the project's consistency with state laws, public policies, and best interests.
- Prohibits the Department of Commerce from allocating a portion of the state's tax-exempt private activity bond cap to an out-of-state issuer.

HOUSE COMMITTEE ON CAPITAL BUDGET

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Dunshee, Chair; Ormsby, Vice Chair; Warnick, Ranking Minority Member; Zeiger, Assistant Ranking Minority Member; Asay, Jacks, Jinkins, Lytton, Pearson, Smith and Tharinger.

Staff: Meg Van Schoorl (786-7105).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background:

Tax-Exempt Private Activity Bonds.

The federal tax code classifies state and local bonds as either governmental bonds or private activity bonds. Generally, the interest on state and local governmental bonds is exempt from federal taxation, whereas the interest on most private activity bonds is not tax exempt. Governmental bonds are for projects that benefit the general public and are issued by government entities. Private activity bonds are issued for the benefit of private entities. When private activity bonds are used for projects that also have a substantial public benefit, called "qualified private activities," the bonds may qualify for federal tax exempt status. Qualifying activities include housing, manufacturing, education, and environmental facilities. Because interest earned by investors on these bonds is not subject to the federal income tax, investors are willing to accept a lower interest rate, and this lower rate reduces the costs of the project to the issuer and the project developer.

Tax-exempt private activity bonds are not obligations or pledges of the full faith and credit of the state or its political subdivisions. Tax-exempt private activity bonds are non-recourse bonds. The repayment of the bond is the responsibility of the user of the bond proceeds.

State Bond Cap Allocation.

Federal law limits the total dollar amount of certain tax-exempt private activity bonds that may be issued annually in a state. Each state's "bond cap" is calculated according to a federal formula: a certain dollar amount per capita, determined each year by the Internal Revenue Service, multiplied by the state's official population, as estimated by the Census Bureau. For 2011 Washington's population is 6,724,540 and the dollar amount per capita is \$95, yielding a state bond cap of \$638,831,300.

The allocation of the state's bond cap is determined by statute. The RCW 39.86.120 allocates the state's bond cap as follows: housing, 32 percent; "small issue" manufacturing, 25 percent; student loans, 15 percent; "exempt facilities" such as local transportation, energy, and environmental facilities, 20 percent; and a "remainder/redevelopment" category, 8 percent.

The Department of Commerce (Commerce) administers the state's Bond Cap Allocation Program (BCAP). The BCAP authorizes the issuance of tax-exempt private activity bonds; reviews and approves projects for compliance with federal and state law; and monitors bond issuances to ensure that the state does not exceed the annual total. The BCAP may reallocate unused bond cap allocations within any of the five categories to other categories after July 1, and before the end of the calendar year, may reallocate unused allocations to one or more issuers as "carry-forward" to be used within three years.

Tax-exempt private activity bonds not subject to the bond cap are those used for capital projects owned by 501 (c) (3) nonprofit organizations, such as health care facilities, higher education buildings and facilities, and local community facilities such as YMCAs, job training facilities, and museums.

Using Tax-Exempt Private Activity Bonds for Washington Projects.

Project developers pursuing use of tax-exempt private activity bonds must work with a bond issuing authority (authority). In Washington there are five statewide authorities and a number of local authorities. The statewide authorities are the Washington State Housing Finance Commission (RCW 43.180); the Washington Economic Development Finance Authority (RCW 43.163); the Washington State Higher Education Facilities Authority (RCW 28B.07); the Washington State Health Care Facilities Authority (RCW 70.37); and the Tobacco Settlement Authority (RCW 43.340). These statewide authorities are limited by law to financing projects within the state. Examples of local authorities include the industrial development corporations of the Port of Bellingham and Spokane County, authorized under RCW 39.84, and the Seattle, Tacoma, and Vancouver Housing Authorities, authorized under RCW 35.82.

An authority assesses a given project and financing options. If the project qualifies for tax-exempt private activity bonds and is in a category that is subject to bond cap allocation, the authority applies to the BCAP for approval to issue bonds against the bond cap for that category. State law prescribes the process and criteria for requesting and granting such approval. An authority whose project is accepted is awarded a Certificate of Approval by the BCAP.

Under federal law, tax-exempt private activity bonds may not be issued for a project until approved by each government having jurisdiction over the area in which the facility is to be located. A public hearing and approval by the elected body is the standard method for obtaining public approval.

Out-of-State Bond Issuing Authorities.

Three states – Wisconsin, Missouri, and Colorado – have laws allowing in-state bond issuing authorities to finance projects in all 50 states. The most recent is the Wisconsin Public Finance Authority (PFA), established in legislation enacted in 2010.

The PFA is authorized to issue tax-exempt and taxable bonds for projects located within or outside Wisconsin and may apply to any unit of government, within or outside the state, for an allocation of the tax-exempt private activity bond cap. Before issuing bonds on any economic development or housing facilities in Wisconsin, the PFA must receive approval from the Wisconsin Housing and Economic Development Authority. Before issuing bonds on any health or education project in Wisconsin, the PFA must receive approval from the Wisconsin Health and Educational Facilities Authority. The Wisconsin law is silent on state-level approvals or requirements the PFA must seek or meet in other states in order to issue bonds. However, the law does prohibit the PFA from issuing bonds to finance a capital improvement project until a political subdivision within whose boundaries the project is to be located has approved the financing.

Summary of Substitute Bill:

An issuer of private activity bonds, formed or organized under the laws of another state and proposing to issue bonds for a project within Washington, is required to provide specific

information to the relevant Washington statewide issuing authority and receive its approval to proceed to public hearing.

The following information must be received by the authority at least 120 days prior to the public hearing for the proposed bond issuance: (1) a copy of the proposed notice of public hearing; (2) the maximum stated principal amount of the bond; (3) the facility description and location; (4) the finance plan; (5) the bond issuer's name; (6) the facility owner or principal user; (7) how the project will meet Washington's public policy objectives and requirements, and those of the authority; and (8) payment of a project review fee established by the authority.

If the authority finds that the facility and information submitted are consistent with the state's laws, public policy, and best interests, then the authority must authorize the relevant government unit in writing to proceed with the public hearing. If the authority finds the facility and information submitted inconsistent with the state's laws, public policy, and best interests, the public hearing may not proceed and the bonds may not be issued by the out-of-state issuer.

The Commerce is prohibited from making an allocation of the state bond cap to a bond issuing authority formed or organized under the laws of another state.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The five Washington statewide bond issuing authorities all have policies and guidelines that exceed federal minimum requirements. Our statutes articulate clear public policy objectives in the areas of housing, economic development, higher education, and health care. The in-state authorities care about contributing to the state's economy, creating jobs, and using private capital to meet public policy objectives. Our concern is that an out-of-state issuer would not care about our state's policy objectives. In addition, the in-state authorities are integrated into Washington government more than an out-of-state issuer could be: the authorities' board members are often appointed by the Governor, and include legislators and agency directors. In normal economic times, the amount of state bond cap is usually insufficient for the project needs of the five in-state authorities and local authorities. Bond cap is a limited resource that should not be made available to out-of-state issuers. This bill was introduced because of a recently established, out-of-state issuing authority which is promoting itself as an inexpensive alternative compared to our in-state authorities. Within its home state, this issuer must have its peer authorities' permission to take on projects, and this same courtesy should be extended to our in-state authorities.

(Opposed) None.

Persons Testifying: Kim Herman, Washington State Finance Commission; Donna Fincke, Health Care Facilities Authority; and Rodney Wendt, Washington Economic Development and Finance Authority.

Persons Signed In To Testify But Not Testifying: None.